

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHEW HOY QUONG,

Appellant,

VS.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, California,

Appellee.

In the Matter of the Application of Chew Hoy Quong, for a Writ of Habeas Corpus for and on behalf of his wife, Quok Shee.

PETITION FOR A REHEARING ON BEHALF OF APPELLANT.

Filed

AUG 28 1917

DION R. HOLLY, D. Monckton
Chronicle Building, San Francisco,

ROY A. BRONSON,
Hearst Building, San Francisco,
*Attorneys for Appellant
and Petitioner.*

Filed this.....day of August, 1917.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

No. 2926

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PETITION FOR A REHEARING ON BEHALF OF APPELLANT.

To the Honorable William B. Gilbert, Presiding Judge, and the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

A rehearing is respectfully prayed in the above entitled cause for the purpose of enabling counsel to direct the attention of the court to a matter presented at the argument which was overlooked in the decision herein.

Your petitioner respectfully calls the court's attention to the fact that the same point is involved in this case as was involved in the case of Mah Shee v. White, No. 2946, decided by this court on June 25, 1917, in which case the said point was determined in favor of the petitioner and appellant Mah Shee.

The point referred to and decided in the said Mah Shee case, but overlooked in this cause, is: that after counsel has filed his notice of appeal from the decision of the Commissioner of Immigration to the Secretary of Labor he has the right to interview the applicant, as a basis for the introduction of further evidence in support of said applicant's appeal and that to deny counsel an opportunity for such an interview is a denial of a full and fair hearing according to the law and regulations of the department.

In the case now before your honors, a rehearing of which is respectfully asked, the same identical proceedings were had before the immigration authorities as were had in the said Mar Shee case. In fact the letters from the acting commissioner denying counsel the right to interview the applicant in each case are almost *verbatim*.

On September 25th after notice of appeal had been filed to the Secretary of Labor and after counsel had requested an interview with the applicant the acting commissioner responded thereto as follows:

“The request * * * that you *as counsel* and the alleged husband be permitted to interview the applicant as a basis for the introduction of further evidence in support of her appeal, must also be denied, there being no authority in either the law or regulations for the granting of such a request.”

(Page 50 of Record.)

Thus it is clear that the same point appears in this case as was decided in favor of petitioner in the Mah Shee case. In fact these two cases were handled simultaneously and by the same counsel before the immigration officials and were considered in conjunction on appeal to the Secretary of Labor.

(See letter, page 53 of Record.)

The only difficulty therefore is: was the point presented to the consideration of this court in briefs or on oral argument?

At the time of submission of this cause after oral argument on May 28, 1917, Dion R. Holm, who argued the cause for appellant, asked permission of this court that the opening brief of George McGowan, Esq., in the case of Mah Shee, No. 2946, on appeal to this court, be considered as a part of appellant's brief herein, in so far as it touched upon the contention that the detained was held “incomunicado” at the immigration station, counsel stating that the same point was involved herein as was involved in the Mah Shee case in that regard. He further made reference to the fact that the letter denying counsel the right to interview the

detained was set out at length in the brief of counsel for the government and that appellant at this time desired to avail himself of the point.

The court through the presiding judge after the request was made stated that it was so ordered. Through some inadvertence, however, the order does not appear in the minutes of the court.

The above is covered by the affidavit of Dion R. Holm hereunto annexed and made a part hereof and marked "Exhibit A".

The point therefore was not waived or abandoned but was actually insisted upon by appellant.

The point is raised in the original petition for the writ in the District Court, in so far as it is covered by the general allegation that the detained was denied a *full and fair hearing* by the immigration officials. And furthermore, the original record of the proceedings upon the face of which the point appears was made a part of the petition for the writ by order of court at time of the hearing of the order to show cause.

(Transcript, pp. 11-12.)

We respectfully submit therefore that a rehearing should be granted in this cause for the purpose of considering the point overlooked in the court's decision that the detained was denied a full and fair hearing before the immigration officials by reason of the fact that she was held "incommunicado" and refused the right to confer with her

counsel for the purpose of submitting further evidence in support of her appeal.

Dated, San Francisco,
August 25, 1917.

DION R. HOLM,
ROY A. BRONSON,
*Attorneys for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

DION R. HOLM,
*Of Counsel for Appellant
and Petitioner.*

(APPENDIX FOLLOWS.)

APPENDIX.

EXHIBIT A.

No. 2926

Chew Hoy Quong,

Appellant,

vs.

Edward White as Commissioner of
Immigration at the Port of San
Francisco,

Appellee.

State of California,
City and County of San Francisco.—ss.

Dion R. Holm, being duly sworn deposes and says:

That he is one of the attorneys for appellant herein; that on May 28th, 1917, he argued the above entitled cause orally before the above entitled court; that prior to the submission of said cause to said court for its decision he asked permission of said court that the brief of George McGowan, Esq., in the case of Mah Shee, No. 2946, on appeal to said court, be considered as a part of appellant's brief in the above entitled cause in so far as said brief dealt with the contention that the detained was held "incommunicado" at the Immigration Station; that he further stated to the court that the same point was involved in the above entitled case as

was involved in said case of Mah Shee v. White, No. 2946, and that appellant desired to avail herself of said point; that he further stated that counsel for respondent had touched upon the point in his reply brief although appellant's opening brief had made no reference to it and that appellant desired to cover the contention by considering the said brief in the said Mah Shee case as a portion of the brief already filed herein; that the said court in answer thereto, speaking through the Honorable William B. Gilbert stated that it was so ordered; that the matter was thereupon submitted to said court for its decision.

DION R. HOLM.

Subscribed and sworn to before me this 27 day of August, 1917.

(Seal)

JULIA W. CRUM,
Notary Public in and for the City and
County of San Francisco, State of
California.